

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3389 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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AMIN GAFUF SAIYED

Versus

STATE OF GUJARAT

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Appearance:

MR UM PANCHAL for the Petitioner.

MR UR BHATT, AGP, for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/07/96

ORAL JUDGEMENT

Petitioner Amin @ Amid Gafur Saiyad, by way of this petition under Article 226 of the Constitution of India, has challenged the legality and validity of the order of his detention dated 1-3-1996 passed under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 by the Commissioner of Police, Surat City.

The detaining authority , in the grounds of detention supplied to the detenu, has placed reliance on two criminal cases registered against the detenu vide C.R.No. 103/95 under sections 324 and 337 of the Indian Penal Code and section 135 of the Bombay Police Act and C.R.No. 1/96 under sections 302,323, 504, 34 of the Indian Penal Code and section 135 of the Bombay Police Act. Over and above these two criminal cases, further reliance is placed on the statements of three witnesses , whose identity is not disclosed to the detenu invoking the provisions of section 9 (2) of the said Act. Placing reliance on this material, the detaining authority has recorded a finding that the detenu is a " dangerous person" within the meaning of section 2 (c) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order it was necessary to pass an order of detention and, therefore, the impugned order is passed, which is challenged in this petition.

This petition is required to be allowed on more than one ground. Mr.Pancholi, learned Advocate for the petitioner, has submitted that with respect to the incident of C.R.No. 103/95, in which the detenu was seriously injured, the detenu himself has filed a cross-complaint vide C.R.No. 104/95. It is therefore submitted that since a copy of this cross-complaint was not placed before the detaining authority, the detaining authority was totally unaware of the said fact and as the detenu is denied a copy of this complaint, he could not make an effective representation against his detention.

In my opinion, when the detenu was seriously injured in the incident which gave rise to the filing of C.R.No.103/95 against him and especially when the detenu himself has also filed a cross-complaint being C.R.No.104/95, and a copy of the said complaint was not placed before the detaining authority, the said fact being a vital circumstance, it escaped the consideration by the detaining authority. Moreover, a copy of the said complaint also ought to have been supplied to the detenu. By not doing so, the right of the detenu to make an effective representation against his detention guaranteed under Article 22 (5) of the Constitution has been denied to him. This has vitiated the continued detention of the detenu.

Even apart from that, it is not in dispute that with respect to the second criminal case registered

against the detenu being C.R.No.1/96, this Court released the detenu on bail on 19-1-1996. The concerned authority thereafter recorded the statements of the witnesses on 5-2-95, 8-2-96 and 13-2-96. It is also not in dispute that the witnesses have narrated the incidents alleged to have taken place more than two months before the date of the recording of the statements. Under these circumstances, no reliance could have been placed on such statements by the detaining authority, especially when the detenu was released on bail on 19-1-1996 and thereafter was not found to have been involved in any other offence. The fact that the detention order is dated 1-3-1996, there is almost a delay of about two months in passing the order of detention from 1-1-1996 the date of the registration of the last offence against the detenu. Since no material is placed by the respondents, explaining this delay in passing the order of detention, the petition is also required to be allowed on this ground.

In the result, this petition is allowed. The order of detention dated 1-3-1996 is quashed and set aside. The detenu Amin @ Amid Gafur Saiyad is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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